

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

LESLIE ANNE PENIN,)	
)	
Plaintiff,)	
)	
-vs-)	Case No. CIV-16-0937-F
)	
ANDREW SAUL, Commissioner of)	
Social Security,)	
)	
Defendant.)	

ORDER

Before the court is plaintiff's attorney's motion for attorney fees under 42 U.S.C. § 406(b)(1), filed on June 13, 2019. Doc. no. 27. Defendant filed a response (doc. no. 28) noting the Commissioner is not a party to § 406(b) fee awards and generally takes no position on such petitions.


On June 5, 2017, an order and judgment were entered remanding this case to the defendant for further administrative action. Upon remand, plaintiff received a fully favorable administrative law judge decision which found that she had been disabled since July 27, 2010. Retroactive benefits of \$65,235.50 were generated for plaintiff for the period of January 2011 through April 2019. Doc. no. 27-1, p. 3. Plaintiff's counsel is now requesting a § 406(b)(1) fee award of \$10,308.80,¹ having expended a total of 35.5 hours in this case at the judicial level. Under the Equal Access to Justice Act, the court previously awarded plaintiff attorney fees in the amount of \$7,208.60. Doc. no. 26. Plaintiff's counsel acknowledges that if he is

¹ At times the motion requests a fee of \$10,308.88. However, the motion calculates the resulting hourly rate based on a fee request of \$10,308.80, and the court uses that figure.

awarded attorneys' fees under § 406(b)(1) as now requested, then he is required to reimburse plaintiff for the EAJA award of \$7,208.60 under Weakley v. Bowen, 803 F.2d 575, 580 (10th Cir. 1986).

The court finds that plaintiff's counsel's motion for attorneys' fees was filed within a reasonable time of counsel's receipt of the Social Security Administrations' Notice of Award letter and is timely. The court also finds that plaintiff's counsel's fee request is reasonable, is less than twenty-five percent of the total past due benefits awarded in this action, and that the fee request is consistent with the contingent fee contract executed by the plaintiff. Accordingly, the court **GRANTS** plaintiff's counsel's motion for attorney's fees pursuant to 42 U.S.C. § 406(b)(1) in the amount of \$10,308.80, payable to plaintiff's counsel, Timothy M. White, out of which counsel shall reimburse plaintiff for the EAJA attorney fee award of \$7,208.60.

IT IS SO ORDERED this 2nd day of July, 2019.


STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE